

### **REMARKS**

The Office Action of September 26, 2006 has been reviewed and the Examiner's comments carefully considered. Claims 1-4 were previously pending in this application. However, claims 1-4 were cancelled via a Preliminary Amendment dated June 10, 2005 and claims 5-9 were added. No claim amendments or cancellations are presented herewith. Accordingly, claims 5-9 remain in this application and claim 5 is in independent form.

### **Claim Objection**

In the Office Action, the Examiner asserts that claim 2 is objected to for a typographical error. As outlined above, however, claim 2 was cancelled in this case via a Preliminary Amendment. As such, this objection is moot and withdrawal is respectfully requested.

### **35 U.S.C. §103(a) Rejections**

The Examiner has rejected pending claims 5-9 of the present application under 35 U.S.C. §103(a) as being assertedly obvious over the teachings of Castillo (WO 00/33659) and Miyazaki et al. (JP409208484A) and Lu et al. (Abstracted-PUB-No: CN 1113153A). Essentially, the Examiner asserts that Castillo teaches a composition comprising *Bocapa monniera* for improving mental and cognitive ability; that Miyazaki et al. teaches a processed plant product comprising "*Hippophae rhamnoides* suitable for treating dementia"; and that Lu et al. teaches "an oral liquor comprising *Dioscorea*[sic] *opposita* (i.e., *Dioscorea bulbifera*) for promoting a child's intelligence.". Thus, by combining the teachings of these references, the Examiner asserts that it would be obvious to combine the ingredients disclosed in the above-cited prior art to make a composition useful for improving mental and cognitive abilities. The Applicant respectfully disagrees with the assertions of the Examiner.

With respect to Lu et al., the Examiner equates *Dioscorea bulbifera* as being the same species as *Dioscorea opposita* and, thus, interchangeable. Such is not the case, however. *Dioscorea opposita* is entirely different from *Dioscorea bulbifera* and their medicinal properties are distinct from one another. *Dioscorea bulbifera* is medicinally used for appetite suppression and not for promoting a child's intelligence. Thus, not only are these

plants both entirely genetically different, they are unique from each other even in respect of their medicinal use.

Further, the combination of *Bocapa monniera*, *Hippophae rhamnoides* and *Dioscorea bulbifera* within the ranges as claimed in claim 5 exhibit synergism. They synergistically reduce the inflammatory process to prevent atherosclerosis in the heart and brain. As inflammation in the heart blood vessels is reduced, cardiovascular disorders are also reduced. Vascular inflammation is one of the leading causes of cardiovascular and neurodegenerative disorders. Thus, the three major functions of the herbal preparation of the presently claimed invention are:

- 1) reduction of body weight by regulating metabolism;
- 2) prevention of atherosclerotic risk; and
- 3) prevention of endothelial dysfunction which is responsible for atherosclerotic changes in the brain and heart.

As such, none of the cited documents, alone or in combination, teach or suggest such functions or uses of the herbal preparation of the present invention. Although the present invention is a combination of known herbal ingredients, the composition gives unexpected properties when taken together. Thus, the composition exhibits beneficial synergism. Accordingly, to one of ordinary skill in the medicinal arts, the presently claimed invention is truly non-obvious over the art of record.

Therefore, and as discussed above, it would not have been obvious for one skilled in the art to combine the teachings of Castillo, Miyazaki et al. and Lu et al. in order to arrive at the presently claimed invention.

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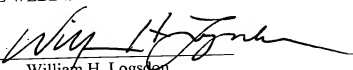
**Summary**

For all the foregoing reasons, Applicant believes that claims 5-9 are patentable over the cited prior art and are in condition for allowance. Withdrawal of the objection, reconsideration of the rejections, and allowance of pending claims 5-9 are respectfully requested.

Respectfully submitted,

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